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| <div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div> | | Hearing Date/Agenda Number P.C. 10-09-02 Item: 3.e. | |
| | | File Number CP02-048 | |
| | | Application Type Conditional Use Permit | |
| | | Council District 1 | |
| | | Planning Area West Valley | |
| | | Assessor's Parcel Number(s) 303-25-001 | |
| PROJECT DESCRIPTION | | | |
| Completed by: Darren McBain | | | |
| Location: Northeast corner of Saratoga Avenue and the I-280 Freeway | | | |
| Gross Acreage: 15.3 | | Net Acreage: 15.3 | |
| | | Net Density: n/a | |
| Existing Zoning: R-1-8 Residence | | Existing Use: Private school | |
| Proposed Zoning: No change | | Proposed Use: Approximately 58,400-square-foot building for private school use | |
| GENERAL PLAN | | | |
| | | Completed by: DM | |
| Land Use/Transportation Diagram Designation High-Density Residential (25-50 DU/Acre) | | Project Conformance: [X] Yes [] No [X] See "General Plan Conformance" section, below | |
| SURROUNDING LAND USES AND ZONING | | | |
| | | Completed by: DM | |
| North: Apartments | | A(PD) Planned Development | |
| East: Apartments | | R-M Residence | |
| South: I-280 Freeway | | N/A | |
| West: Commercial center | | CN Commercial Neighborhood | |
| ENVIRONMENTAL STATUS | | | |
| | | Completed by: DM | |
| [] Environmental Impact Report [] Negative Declaration circulated on [] Negative Declaration adopted on | | [X] Exempt [] Environmental Review Incomplete | |
| FILE HISTORY | | | |
| | | Completed by: DM | |
| Annexation Title: Boynton No. 14 | | Date: July 12, 1963 | |
| PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION | | | |
| [x] Approval [] Approval with Conditions [] Denial | | Date: _____ | Approved by: _____ [X] Action [] Recommendation |
| OWNER/APPLICANT/DEVELOPER | | | |
| Harker School, attn. Howard Nichols 500 Saratoga Avenue San Jose, CA 95129 | | | |

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Darren McBain

Department of Public Works

See attached memo

Other Departments and Agencies

Not attached

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Harker School, is requesting a Conditional Use Permit to allow an approximately 58,400-square-foot addition and a small, eight-car parking lot at an existing private school serving middle school and high school students. Private schools and additions thereto are conditional uses in the City's residential zoning districts. Though previously a middle school and elementary school, Harker began phasing-in high school students in the 1998-99 school year.

This permit also includes conceptual revisions to the site layout for future phases of the school's previously approved master plan (File No. H98-098 and subsequent Permit Amendments), which is expected to reach its ultimate build-out in approximately five to ten years. This permit supercedes the approval of the previous master plan, which was approved before private schools became a conditional use in 2001. The proposed changes to the master plan are minor (see Analysis section on Page 5) and are shown for conceptual purposes only at this time. Proposals to more specifically address the future phases, including site design, landscaping, and architecture will follow under one or more separate Conditional Use Permit Amendments.

The building site is located on the interior of the large, 15-acre Harker campus. Nearby land uses include multi-family residences on the north and east sides of the property, and commercial establishments to the west across Saratoga Avenue. The I-280 freeway is located near the school's southern boundary.

Project Description

The proposed project consists of a three-level, 58,400-square-foot building that includes science labs, classrooms, offices, storage, and other similar spaces for education-related uses. One of the 32-foot-high building's levels is a basement level. Therefore, the building is two-story in appearance.

An eight-space parking lot is also proposed in a separate area of the site near the school's entrance on Saratoga Avenue. The existing parking lot in this location was recently constructed without prior Planning approval. The parking lot's original configuration did not conform to the 25-foot setback

requirement of the R-1-8 zoning district. The parking lot is being modified to conform to this development standard.

This project also includes changes to the previously approved site plan for the school's master plan, which was originally approved in 1999 (File No. H98-098). The school's master plan was originally approved under a Site Development Permit. Private schools became a conditional use under the revised Zoning Ordinance that took effect in February of 2001. The master plan, build-out of which is expected to take place in several phases over the next five to ten years, originally included a total of approximately 225,000 square feet of building area, including 115,000 square feet of new construction plus the existing structures. Approximately 110,000 square feet of buildings currently exist on the site.

The currently proposed 58,400-square-foot building is in addition to the previously approved total build-out. However, the school's expected maximum enrollment of 885 students remains unchanged under this project from the level that was previously approved. A condition of approval limiting the school's approved enrollment to this level is included in this permit. The school's current enrollment is, according to the applicant, approximately 845 students.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the requirements of the California Environmental Quality Act (CEQA). CEQA Guidelines include an exemption (section 15314) for private school additions that do not increase student capacity by more than 25 percent. This project does not include, and disallows, any expansion of the previously approved level of student enrollment. It should also be noted that the location of the proposed addition is inside an already developed area of the site.

The project includes removal of seven existing trees, including five Yucca trees (two of which are ordinance-size, i.e., 56 inches in circumference or greater) and two small Oak trees with trunks approximately 10 inches in circumference. The removed trees are not considered significant and will be replaced at a 2-to-1 ratio in a more visible area of the site as part of this project.

GENERAL PLAN CONFORMANCE

The proposed use is technically inconsistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of High-Density Residential (25-50 dwelling units per acre), in that the proposal is for a public-quasi-public, nonresidential land use. However, the proposed project is part of an existing land use that has been present on the site for many years, and will continue to exist in this location in the foreseeable future. It is staff's opinion that the proposal conforms to the intent of the General Plan, in that the existing land use and the proposed project are compatible with nearby land uses and do not result in any adverse impacts on the surrounding area.

ANALYSIS

The primary focus of the analysis is the project's conformance to the Zoning Ordinance and the City's Commercial Design Guidelines (CDGs). As described in greater detail below, staff finds that the proposed project conforms to the Zoning Ordinance and is adequately consistent with the CDGs.

1. Zoning Ordinance conformance

- a. *Parking:* The Zoning Ordinance requires schools to provide one parking space per five high school students (grades 9-12) and one parking space per teacher or employee. Thus, the parking requirement for a given private school varies in relation to the school's student enrollment and staff employment levels, both of which may fluctuate from year to year. In order to allow flexibility in how the parking is to be allocated and still remain in conformance with the Zoning Ordinance, a Conditional Use Permit for a private school will typically identify the number of parking spaces available on the site and require that the enrollment and staffing levels conform to that number of parking spaces.

In this case, the information provided by the applicant indicates that the school's current figures include 535 students in grades 9-12, and 153 staff members, for a total parking requirement of 260 spaces. Future enrollment and staffing levels would slightly increase the requirement to 266 spaces. However, the 297 spaces existing on the site adequately meet the current and maximum projected parking demand. As stated earlier in this report, a condition of approval included in this permit caps the enrollment at the level that was previously analyzed for traffic trip-generation purposes and approved under the original master plan (File No. H98-098). Any expansion of the approved enrollment level would require further analysis in the guise of a subsequent Conditional Use Permit or Amendment.

- b. *Development Standards:* The proposed building conforms to the 35-foot height limit that applies in the R-1-8 zoning district. The building easily meets the required setbacks, in that its location is well within the interior of the site.

A small parking lot was recently built near the front of the site without prior Planning approval. The lot did not originally conform to the required 25-foot front setback of the R-1-8 zoning district (the setback applies to parking as well as buildings, in order to provide an appropriate amount of buffering between parking lots and the public street). However, the lot is being reduced in size in order to conform to the 25-foot setback requirement. Because an adequate number of parking spaces (per the Zoning Ordinance parking ratios) is already provided on the site, staff would typically be reluctant to recommend approval of a separate parking lot in this area of the site. However, in this case, the parking lot in question is relatively inconspicuously located, and well screened by an existing fence and landscaping. Additional landscaping is being added to further minimize the parking lot's visibility from the street. The applicant has indicated to staff that the necessary modifications are currently being made to the parking lot. A condition of approval requiring additional follow-up is included in this permit, to ensure that this area of the site will be adequately addressed.

2. CDG consistency

The CDGs state that buildings within a complex should be stylistically consistent and relate to one another. The proposed building has a clean-lined, relatively modern design that is consistent with other nearby buildings on the site, particularly the adjacent classroom structure to the east. However, it should be noted that, because the proposed building is located well within the site and is screened by fences and trees, it will be only marginally visible from off-site.

3. Note regarding Sheet PD1.3 in the plan set:

The future phases of the master plan are included in the plans for this permit in order to “memorialize” the previous approval under Site Development Permit No. H98-098 (and subsequent Amendments) of the school’s master plan. The master plan, as revised with this project, includes a gross building area of 284,995 square feet, much of which has not yet been built, though Planning review fees have been paid for the total. As noted earlier in this staff report, the site layout depicted for subsequent phases of the plan should be considered “conceptual” only. Buildings shown for subsequent phases will require additional subsequent review and analysis in the form of a Conditional Use Permit or Permit Amendment to address the details of the proposed building placement, architecture, heights, grading and drainage, landscaping, and the like. The conceptual site plans shown on PD1.3 of this plan set may also be revised by the applicant at that time.

The subsequent-phase site plans shown in this plan set differ slightly from what was previously approved under the original master plan. While the overall amount of square footage is the same other than the addition that is the subject of the current project, the elements of the plan (e.g., theater, parking garage, gymnasium) remain essentially the same, but their proposed locations are shifted around on the site. As noted above, the buildings will have little visibility from off the site, and little functional relationship to off-site land uses. Their conceptual locations will be further refined and analyzed under subsequent permits, and do not warrant or lend themselves to substantial analysis at this time.

PUBLIC OUTREACH

Notices for the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of High-Density Residential (25-50 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located on a 15.3-gross-acre parcel in the R-1-8 Residence Zoning District.
3. The project site is currently developed with a private school that enrolls students in grades 7-12.
4. A master plan approving new construction of up to 116,500 square feet of was approved the master plan that was approved for the existing private school under Site Development Permit File No. H98-098 and subsequent Site Development Permit Amendments.
5. The proposed project consists of a 58,400-square-foot, two-story addition for private school

purposes, modification and legalization of an existing eight-space surface parking lot, and conceptual modifications to the site plan for the previously approved master plan.

6. Private schools are a conditional use in the City's residential zoning districts.
7. Under the provisions of Section 15314 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
8. The proposed project, as conditioned below, conforms to the setbacks of the R-1-8 Residence Zoning District.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is inconsistent with the site's designation of High Density Residential on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José. However, the proposal conforms to the intent of the General Plan, in that the existing land use and the proposed project are compatible with nearby land uses and do not result in any adverse impacts on the surrounding area.
2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and

quality of traffic such use would generate; and

- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Except as noted under Condition #3, below, development of the site shall conform to approved development plans entitled "The Harker School," dated January 14, 2002, on file with the Department of Planning Building and Code Enforcement.
2. **Approval Supercedes Previous Master Plan Approvals.** This permit supercedes Site Development Permit File No. H98-098 (and subsequent Permit Amendments) for purposes of master plan approval and conformance to the Zoning Ordinance. All of the conditions of the previously approved Permit and Permit Amendments shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted in this permit or in a subsequent Conditional Use Permit or Permit Amendment.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Front Parking Lot Modifications.** Within 60 days, and prior to issuance of a Building Permit, the applicant shall secure and agree to implement a Permit Adjustment that addresses the following

items to the satisfaction of the Director of Planning:

- a. Provide photographs and/or other evidence documenting, to the satisfaction of the Director of Planning, that the parking lot that was previously constructed without benefit of permit has been reconfigured to conform to the 25-foot setback requirement of the R-1-8 district; and
 - b. Provide additional trees and/or other landscaping added in the area of the removed parking spaces, to the satisfaction of the Director of Planning
5. **Maximum Student Enrollment.** This permit caps enrollment at 890 students (the maximum level that was analyzed from traffic trip-generation purposes under previous permits), subject to the availability of adequate parking as noted in Condition #5, below. Any future expansion of enrollment shall require additional traffic analysis under a subsequent Conditional Use Permit or Conditional Use Permit Amendment.
6. **Parking.** The levels of staffing and student enrollment shall at all times be restricted to the availability of an adequate number of parking on the site, in conformance with the parking requirements of the Zoning Ordinance. The number of enrolled high school students in the proportion to the school's overall enrollment shall be limited as necessary to conform to the required parking ratio for private schools in the Zoning Ordinance.
7. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
8. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-02186) to the satisfaction of the Director of Public Works:
 - a. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. **Geology:**
 - 1) A grading permit is required prior to the issuance of a Public Works Clearance.
 - 2) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 277-4304 for more information concerning the requirements for obtaining this permit.
 - 3) Because this project involves a land disturbance of more than five acres, the applicant is required to submit a Notice of Intent to the State Water Resources

Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

- 4) A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City Engineering Geologist prior to the issuance of a Public Works Clearance or a grading permit.

c. **Street Improvements:**

- 1) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- 2) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.

- d. **Minor Improvement Permit:** The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.

9. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. *Construction Plans.* This permit file number, CP02-048 shall be printed on all construction plans submitted to the Building Division.
- b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- c. *Americans with Disabilities Act and Title 24.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA) and Title 24.
- d. *Archaeology:* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

10. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets.
11. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.
12. **Storm Water Management.** The project shall conform with the City of San José National Pollutant Discharge Elimination System (NPDES) Storm Water Permit and shall include Best Management Practices (BMPs) as specified in the Blueprint for a Clean Bay to control the discharge of storm water pollutants including sediments associated with construction activities. To obtain a copy of the booklet or other information about the NPDES permit requirements, please call the Department of Public Works at (408) 2377-5161.
 - a. *Inlet Filters.* The project developer shall install inlet filters or other approved storm water control measures, subject to the approval of the Director of Planning, in all on-site storm drainage inlets. These filters or other measures shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:
 - 1) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
 - 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
 - 3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
 - 4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
 - 5) Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.

- 6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
 - 7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
- b. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
13. **Street Cleaning and Dust Control.** During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
 14. **Roof Equipment.** All roof equipment, including any satellite antenna dishes, shall be screened from view. No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line. Prior to final occupancy of the project, the applicant shall provide engineering and acoustical specifications for project mechanical equipment to be reviewed by an acoustical specialist to ensure that the project will be in compliance with the City noise standards.
 15. **Utility Structure Approvals.** No approval for utility structures is included in this Permit. All utility structures require approval by the Director of Planning, Building and Code Enforcement pursuant to Title 20 of the San José Municipal Code prior to the approval of utility improvement plans.
 16. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
 17. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
 18. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
 19. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
 20. **Signs.** No new signs are approved at this time. All proposed signs shall be subject to approval

by the Director of Planning. The existing sign shall be removed or relocated, to the satisfaction of the Director of Planning.

21. **No Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
22. **Hazardous Materials.** No storage of hazardous materials, including but not limited to, gasoline, oil and solvents shall be permitted under this permit.
23. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
24. **Landscaping.** On-site planting and irrigation are to be provided as indicated on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
25. **Tree Removals.** Except as shown on the approved plans for the project, no tree removals are approved under this permit. All tree removals on this site are subject to review by the Director of Planning. No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
26. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation to be retained in this project as shown on the approved Landscape Plan. Maintenance shall include pruning and watering as necessary and protection from construction damage. All trees to be preserved shall be permanently identified by metal numbered tags prior to the removal of any tree on the site. All trees to be saved shall be protected by fencing of chain link, hog wire, 4-strand barbed wire, or other fencing approved by the Director of Planning prior to issuance of the Grading Permit or removal of any tree. The fence shall occur at the dripline in all cases and shall remain during construction. Trees to be saved may be protected with a fence surrounding the dripline of the entire mass. All sensitive plant and wildlife habitat areas to be preserved and protected shall be posted prior to issuance of Grading Permit with signs stating that no disturbance, including grading, storage of equipment, vehicles or material, or other disruptions, is allowed. Fencing may be required for areas subject to direct impact, such as trees to be saved or habitat within areas being developed. Fencing and signage shall be maintained by the applicant to prevent disturbances during the length of the construction that might disrupt the habitat or trees.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the

construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.